

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
MCALLEN DIVISION

JOSE A. CHACON FARIAS, LUIS M.
FARIAS SOTO, MIGUEL CHACON
FARIAS and MIS TRES PROPERTIES,
LLC,

Plaintiffs,

V.

RREF CB SBL ACQUISITIONS, LLC and
GARDERE WYNNE SEWELL LLP,

Defendants

Case No. _____

DEFENDANTS' NOTICE OF REMOVAL

Defendants RREF CB SBL ACQUISITIONS, LLC and Gardere Wynne Sewell LLP file this Notice of Removal, pursuant to 11 U.S.C. § 1334 and 28 U.S.C. § 1452. Defendants remove this action from the 275th Judicial District Court, Hidalgo County, Texas.

I. PROCEDURAL HISTORY

1. On October 1, 2015, Plaintiffs Jose A. Chacon Farias, Luis M. Farias Soto, Miguel Chacon Farias, and Mis Tres Properties LLC (“Plaintiffs”) filed their Original Petition and Application for Ex-Parte Temporary Restraining Order and for Temporary and Permanent Injunction (the “Petition”) in the 275th Judicial District Court in Hidalgo County, Texas.

2. Plaintiffs allege the following causes of action: (i) breach of duty of good faith and fair dealing, (ii) breach of contract, (iii) violations of the Texas Deceptive Trade Practices Act, (iv) unreasonable collection efforts, (v) intentional misrepresentation, (vi) violations of the Texas Debt Collection Act, (vii) negligence, and (viii) statutory fraud. In connection with these causes of action, Plaintiffs seek injunctive relief.

3. On October 2, 2015, the state court granted Plaintiffs' request for a temporary restraining order. Specifically, the court enjoined Defendants from foreclosing on certain property subject to a deed of trust.

4. In their Petition, Plaintiffs state:

This is a suit against lending institutions and its trustee that is attempting to foreclose on real property owned by Plaintiffs Farias ***that is under a contract to sell all interest in and the property to Plaintiff Mis Tres Properties, LLC.***

Petition at 1 (emphasis added).

5. Plaintiff Mis Tres Properties, LLC was the debtor in *In Re Mis Tres Properties, LLC*, Case No. 15-50356-CAG, in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division. On October 8, 2015, the Bankruptcy Court dismissed Case No. 15-50356-CAG but retained exclusive jurisdiction and exclusive venue on any applications for injunctive relief affecting property of the estate, specifically including any applications for injunctive relief involving any property subject to RREF's security interests.¹ The Bankruptcy Court's Dismissal Order is attached as **Exhibit A** ("Dismissal Order").

6. The real property described in the Petition is subject to RREF's security interests granted by Mis Tres Properties, LLC. Further, any property in which Mis Tres Properties LLC has an interest is property of the bankruptcy estate and subject to the Bankruptcy Court's

¹¹ Specifically, the dismissal order provides:

It is further,

ORDERED, ADJUDGED AND DECREED that this Court retains EXCLUSIVE subject matter jurisdiction and EXCLUSIVE venue over any application for temporary restraining orders or other injunctive relief affecting property which was property of the bankruptcy estate pursuant to 11 U.S.C. § 541 in the above-captioned bankruptcy case, as if such case had not been dismissed, specifically including, any application for a temporary restraining order involving any property subject to RREF CB SBL Acquisitions, LLC's security interests.

Ex. A p. 2.

exclusive jurisdiction and exclusive venue under the Bankruptcy Court's Dismissal Order. As Plaintiffs allege, Mis Tres Properties LLC has an interest in the real property at issue in this case.

7. Thus, pursuant to the Bankruptcy Court's Dismissal Order, this proceeding should have been filed in the United States Bankruptcy Court for the Western District of Texas, San Antonio Division, because it is an application for injunctive relief affecting property of the bankruptcy estate and, more specifically, property subject to RREF's security interests.

8. Defendants remove this action to the United States District Court for the Southern District of Texas because this action is pending within this district. *See* 28 U.S.C. § 1446(a). After conferring with Plaintiffs, Defendants will file a motion to transfer venue asking that this action be transferred to the Western District of Texas in compliance with the Bankruptcy Court's Dismissal Order.

II. BASIS FOR REMOVAL

9. This case is subject to removal under 11 U.S.C. § 1334(b) (by way of 28 U.S.C. § 1452(a)) because this is a matter arising in or related to a case under title 11.

10. Additionally, this case is subject to removal under 11 U.S.C. § 1334(e) (by way of 28 U.S.C. § 1452(a)) because this matter concerns the Bankruptcy Court's exclusive jurisdiction and exclusive venue under its Dismissal Order concerning injunctive relief affecting property of the bankruptcy estate.

11. Specifically, this lawsuit is an application for injunctive relief subject to the Bankruptcy Court's exclusive jurisdiction and exclusive venue under its Dismissal Order because this action was initiated by Mis Tres Properties, LLC, the Chapter 11 Debtor, and affects RREF's security interests in property of Mis Tres Properties, LLC's bankruptcy estate. Thus, the central dispute in this lawsuit is the right to foreclose on certain

property in which the Bankruptcy Court has retained exclusive jurisdiction and exclusive venue to hear as affecting Mis Tres Properties, LLC's bankruptcy estate interest. As such, subject matter jurisdiction exists under 11 U.S.C. § 1334(b) and (e).

III. OTHER REQUIREMENTS

12. Pursuant to 28 U.S.C. § 1446(d), a copy of the written notice will be promptly provided to the adverse party and the 275th Judicial District Court, Hidalgo County, Texas.

13. This Notice of Removal is timely filed, pursuant to 28 U.S.C. § 1446(b).

14. As required by 28 U.S.C. § 1446 and Southern District Local Rule 81, attached to this Notice of Removal are copies of the following documents:

- i. all executed process in the case (none);
- ii. all pleadings asserting causes of action;
- iii. all orders signed by the state judge;
- iv. the docket sheet;
- v. an index of matters being filed; and
- vi. a list of all counsel of record, including address, telephone numbers and parties represented.

IV. CONCLUSION

Defendants respectfully request that the state court action be removed to the United States District Court for the Southern District of Texas—McAllen Division and, upon application by Defendants or own the Court's own motion, be transferred to the United States District Court for the Western District of Texas.

Dated: October 13, 2015

Respectfully submitted,

/s/ Robert T. Slovak

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ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on October 13, 2015, a true and correct copy of this Notice of Removal was served on the following:

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/s/ Robert T. Slovak

Robert T. Slovak